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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,352	09/23/2005	Catherine Lamy	FR 030034	1282
24737	7590	08/22/2006	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			RIZK, SAMIR WADIE	
			ART UNIT	PAPER NUMBER
			2133	
DATE MAILED: 08/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/550,352	LAMY, CATHERINE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sam Rizk	2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/23/2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTIONS**

- Claims 1-3 have been submitted for examination
- Claims 1-3 have been rejected

**Duplicate Claim**

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

1. Claim 2 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

**Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed.

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Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-3 of copending Application No. 10/548,250. Although the conflicting claims are not identical they are not patentably distinct from each other because the claims of application 10/548,250 anticipate the instant application.
2. Claims 1-2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/531,969. Although the conflicting claims are not identical they are not patentably distinct from each other because the claims of application 10/548,250 anticipate the instant application.  
  
"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type

double patenting because the claims at issue were obvious over claims in four prior ad patents), In re Bern, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (Affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING ENBANC (DECIDED: May 30, 2001).

### ***Drawings***

3. Figures (1-9) should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1, recites the limitation "the possible L1-tuples" in page 2, line 14.  
There is insufficient antecedent basis for this limitation in the claim.

5. Claim 1, recites the limitation "the diverging distances" in page 2, line 16. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 1, recites the limitation "the constraint of distance" in page 3, line 6. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 1, recites the limitation "the found words" in page 3, line 9. There is insufficient antecedent basis for this limitation in the claim.
8. Claim 1, recites the limitation "the probability of the source" in page 3, line 16. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by the Applicant Admitted Prior Art (Hereinafter (AAPA)).
10. In regard to claim 1, AAPA teaches;
  - A method of building a variable length error code, said method comprising the steps of :

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- (1)initializing the needed parameters : minimum and maximum length of codewords  $L_1$  and  $L_{max}$  respectively, free distance  $d_{free}$  between each codeword (said distance  $d_{free}$  being for a VLEC code  $C$  the minimum Hamming distance in the set of all arbitrary extended codes), required number of codewords  $S'$ ,

(Note: page 6, lines (18-27) in AAPA)

- (2) generating a fixed length code  $C$  of length  $L_1$  and minimal distance  $b_{min}$ , with  $b_{min} = \min(b_k ; k = 1, 2, \dots, R)$ ,  $b_k$  = the distance associated to the codeword length  $L_k$  of code  $C$  and defined as the minimum Hamming distance between all codewords of  $C$  with length  $L_k$ , and  $R$  = the number of different codeword lengths in  $C$ , said generating step creating a set  $W$  of  $n$ -bit long words distant of  $d$ ;

(Note: page 6, lines (27-35) in AAPA)

- (3) storing (step 21) in the set  $W$  all the possible  $L_1$  tuples at the distance of  $d_{min}$  from the codewords of  $C$  (said distance  $d_{min}$  for a VLEC code  $C$  being the minimum value of all the diverging distances between all possible couples of different-length codewords of  $C$ ), and, if said set  $W$  is not empty, doubling the number of words in  $W$  by affixing at the end of all words one extra bit, said storing step therefore replacing the set  $W$  by a new one having twice more words than the previous one and the length of each one of these words being  $L_1 + 1$ .

(Note: page 7, lines (8-18) in AAPA)

- (4) deleting (step 31) all the words of the set  $W$  that do not satisfy the  $c_{min}$  distance with all codewords of  $C$ , said distance  $c_{min}$  being the minimum converging distance of the code  $C$  ;
- (5) in the case where no word is found or the maximum number of bits is reached, reducing (step 41) the constraint of distance for finding more words ' ,

(Note: page 7, lines (19-30) in AAPA)

- (6) controlling that all words of the set  $W$  are distant of  $b_{min}$ , the found words being then added to the code  $C$  (step 34) ;

(Note: FIG.2, reference sign (34) in AAPA)

- (7) if (step 35) the required number of codewords has not been reached repeating the steps (1) to (6) (i.e. the steps 21 to 35) until the method finds either no further possibility to continue or the required number of codewords',

(Note: Page 7, lines (20-30) in AAPA)

- (8) if the number of codewords of  $C$  is greater than  $S$ , calculating (phase A4), on the basis of the structure of the VLEC code, the average length  $AL$  obtained by weighting each codeword length with the probability of the source, said  $AL$  becoming the  $AL_{min}$ , if it is lower than  $AL_{min}$ , with  $AL_{min}$ = the minimum value of  $AL$ , and the corresponding code structure being kept in memory ;



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- said building method being moreover characterized in that the deletion is done not only in the last group of a given length obtained group but also in the value and, denoting by  $L_s$  the length of the code to which the method skips back at the end of the deletion step, the beginning of the best VLEC structure of each  $L_s$  is kept in memory and re-used within the next search for  $L_{s'} = L_s + 1$

(Note: page 9, lines (5-15) in AAPA)

11. Claims 2 and 3 are rejected for the same reasons as per claim 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Rizk whose telephone number is (571) 272-8191. The examiner can normally be reached on M-F / 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

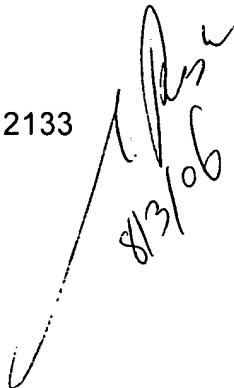
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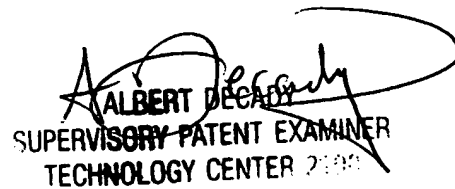
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Sam Rizk, MSEE, ABD

Examiner

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8/3/06

  
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